

Appl. No.: 09/709,772
Amdt. dated: 1/21/2005
Reply to Office Action of December 5, 2003

REMARKS

CLAIM REJECTIONS – 35 U.S.C. § 103

Claims 1-6 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over International Patent Application No. WO 00/59120 in view of Qureshey, et al., U.S. Patent Publication No. US 2002/0072326 A1. It is respectfully submitted that the international application is not a proper reference within the meaning of 35 U.S.C. § 102. In particular, it is respectfully submitted that the claims at issue are entitled to a priority date of August 31, 1999. The Examiner's attention is respectfully directed to the declaration as well as the filing receipt. The earliest effective date of the international patent application WO 00/59120 is its publication date; namely, October 5, 2000. As such, it is respectfully submitted that the international application is not a proper reference within the meaning of 35 U.S.C. § 102 and thus must be withdrawn.

Be that as it may, the Qureshey, et al. patent teaches away from the invention recited at the claims at issue. In particular, as discussed earlier, the Qureshey, et al. reference discloses a nonconventional custom Internet radio, unlike the system recited in the claims at issue, which allows Internet radio to be broadcast over conventional devices. For these reasons and all of the above reasons, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-6.

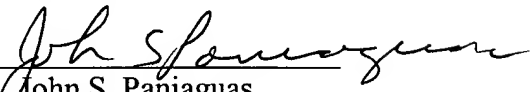
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CLAIM REJECTIONS – 35 U.S.C. § 102

Claims 1, 4, and 7 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Swanson, U.S. Patent Application Publication No. US 2002/0013784 A1. It is also respectfully submitted that the Swanson patent does not qualify as prior art within the meaning of 35 U.S.C. § 102(e). In particular, assuming arguendo, that the earliest effective date of the Swanson patent is the date of its provisional application; namely July 31, 2000, this date does not predate the earliest effective date of the instant application. As mentioned above, the instant application, and in particular the claims 1, 4, and 7, are entitled to a priority date of August 31, 1999. For these reasons, the Examiner is respectfully requested to withdraw the Swanson patent as a reference and withdraw the rejection.

Respectfully submitted,

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